



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

SMC

Docket No: 01323-00

13 April 2000

GYSGT [REDACTED] USMC

Dear Gunnery Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 13 April 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 18 February 2000, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. The Board was unable to find you were not counseled about your performance before you received the contested fitness report. In any event, they generally do not grant relief on the basis of an alleged absence of counseling, since counseling takes many forms, so the recipient may not recognize it as such when it is provided. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure

DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103



IN REPLY REFER TO:
1610
MMER/PERB
18 FEB 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
GUNNERY SERGEANT [REDACTED] SMC

Ref: (a) GySgt. [REDACTED] DD Form 149 of 4 Nov 99
(b) MCO P1610.7B w/Ch 1-5

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 16 February 2000 to consider Gunnery Sergeant [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 901101 to 910531 (CH) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner argues that the report is *de facto adverse*, yet he was never given an opportunity to acknowledge and respond. The petitioner disclaims any counseling concerning his overall performance and believes that the eight marks of "excellent" in Section B are not supported by the comments in Section C. To support his appeal, the petitioner furnishes his own detailed statement.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. Contrary to the petitioner's arguments and assertions, the Board discerns absolutely no inconsistency between any of the assigned ratings in Section B and the narrative comments in Section C. They are also quick to point out that none of the "excellent" marks in Section B require any justification or other explanation.

b. Neither this Headquarters nor the PERB has ever accepted the argument of *de facto adverse*. Marks of "excellent", while evidently less than what the petitioner desires, have absolutely no adverse connotation whatsoever. Whether or not he views the report as "noncompetitive" is not an issue in determining fairness, accuracy, and validity.

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c. To justify the deletion or amendment of a fitness report, evidence of probable error or injustice should be produced. Such is simply not the situation in this case.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Gunnery Sergeant [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]
Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps